THE HIGH COURT

[2022] IEHC 430

[2021/202/JR]

IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 (AS AMENDED) AND IN THE MATTER OF THE INTERNATIONAL PROTECTION ACT 2015

BETWEEN

A.C. & N.H.H.C. (AN INFANT SUING BY HER MOTHER AND NEXT FRIEND A.C.)

APPLICANTS

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL
THE MINISTER FOR JUSTICE AND EQUALITY
IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

DECISION of Ms. Justice Bolger delivered on the 5th day of July, 2022

Introduction

1. The applicants seek an order of certiorari quashing the decision of the first named respondent dated 8 January 2021 ("the impugned decision") due to claimed flaws in how the applicant's credibility was assessed and the Tribunal's application of section 28(7) of the International Protection Act 2015 (hereinafter referred to as 'the Act') in determining whether the applicant was entitled to the benefit of doubt.

2. The applicant also sought an extension of time if necessary which was not opposed by the respondents. I am satisfied that the applicant's submissions on the delay in filing their application merits an extension of time.

3. For the reasons set out below I am refusing the applicants' substantive application.

Background

4. The first named applicant is a national of Zimbabwe where she was born and brought up. She is the mother of the second named applicant who was born on 28 March 2005 when the first named applicant was 20 years of age with her then boyfriend, identified for the purpose of these proceedings as VM. VM did not accept responsibility for his daughter and was physically violent to the first named applicant when she was pregnant. The first named applicant left her infant daughter in the care of her parents and travelled to South Africa to work. Neither of them had significant contact with VM over the years but there was some contact with his family.

5. The first named applicant states that her father was politically active, as a member of the MDC opposition party, while VM was well connected with Zanu PF, the ruling party in the country.

6. The first named applicant says that in 2017 she learned that VM wished to arrange a marriage for her daughter. Her claim that it is customary for young girls in Zimbabwe to

be forced into arranged marriages when very young was verified by country of origin (COI) information.

7. The first named applicant's sister lives in Longford and that applicant had visited previously in 2016. In late 2017 she applied to the Irish Embassy in Pretoria for a visa to visit Ireland and arrived, with her daughter in the State on 17 March 2018. They both applied for international protection on 20 March 2018 based on the first applicant's fears that if they were returned to Zimbabwe, VM, with his connections to the ruling party Zanu PF, will force her daughter into an arranged marriage and that VM would physically abuse her again in the future.

8. On 6 January 2020 the applicants were notified by way of letter that pursuant to a report conducted in accordance with s. 39 of the 2015 Act, the International Protection Office was recommending that neither a refugee declaration nor a subsidiary protection declaration be given. By decision dated 11 January 2021 the applicants' appeal to the Tribunal was unsuccessful and that is the decision that they seek to challenge in these proceedings.

The Decision

9. The Tribunal issued a lengthy decision which set out the background and the applicants' submissions and detailed and reasoned conclusions. The IPO had not accepted the first named applicant's claim of physical abuse by VM but the Tribunal found, on the balance of probabilities, that she had been the victim of physical violence from him on two occasions before her daughter was born. The Tribunal found the first named applicant's account of VM's threat to arrange a marriage for her young daughter was not contrary to country of origin information. However, it also found the first named applicant to have been inconsistent in her details of the alleged incidents underpinning her fear, in relation to the contact between VM and her daughter, how he communicated his intention to arrange a marriage for her, her communication of her opposition to his plans, and the lack of any identified intended husband. The Tribunal also found the applicant's claim that VM had connections with the ruling Zanu-PF party to have been vague and lacking in detail. The Tribunal then moved on to consider whether the benefit of the doubt should be applied to those aspects of the applicants' claim that remained in doubt and stated that s.28(7) of the Act was 'particularly relevant' in such a case. The Tribunal concluded that it was not appropriate to apply the benefit of the doubt to those facts that remained in doubt.

10. The Tribunal went on to find that the first named applicant's account did not reach the necessary threshold of a threat of persecution. The length of time since the first named applicant had been assaulted by VM and the fact that she had lived independently of him since then persuaded the Tribunal that there were good reasons to consider that the persecution would not be repeated. The Tribunal therefore concluded that the first named applicant's fears for her daughter were not objectively justified and did not give rise to a reasonable chance that if they returned to Zimbabwe that she or her daughter would face a well-founded fear of persecution or serious harm.

The applicants' submissions

11. The applicants initially sought the relief quashing the decision of the Tribunal on four grounds but at the hearing confirmed they were confining themselves to the ground at f(1) only, namely the Tribunal's approach to assessing the first named applicant's credibility and its application of s28(7) in assessing whether the applicants were entitled to the benefit of the doubt.

12. The Tribunal accepted on the balance of probabilities that the first named applicant was the victim of physical violence at the hands of VM on two occasions but then, according to the applicants, "put in doubt" two additional aspects of the first named applicant's account, namely the threats of arranged marriage of her dependent daughter and VM's connections with Zanu-PF. The applicants take issue with the manner in which the Tribunal considered whether the benefit of the doubt should be applied to these uncertain material facts.

13. The applicants accept that the Tribunal was entitled to consider whether the benefit of the doubt should be applied to the uncertain material facts but challenge the Tribunal applying s. 28(7) to this consideration. The applicant contends that the Tribunal was not entitled to consider this section in the consideration of whether the applicant was entitled to the benefit of the doubt and that it is not a provision to assess the applicant's credibility, which was how it was applied by the Tribunal.

14. The applicant seeks to distinguish the application of the recent decision of Ferriter J. in *AH and ors v IPAT and Anor* [2022] IEHC 84 on the facts and instead urged the court to follow Mac Eochaidh J. in *DE, LE and SE v Refugee Appeals Tribunal & Ors* [2013] IEHC 304 as requiring a decision-maker to first determine an applicant's general credibility in a discrete, specific context of substantiating a claim by way of documentation, which in turn must necessarily entail a consideration of any application of the benefit of the doubt principle rather than be a measure or guide of how that principle is to be applied.

15. Accordingly, the applicants submit that any reliance on s.28(7) as a basis to determine an applicant's general credibility is an unlawful one, since the applicant's general credibility is something which falls to be before the application of the section.

The respondent's submissions

16. The respondents submit the Tribunal engaged in a comprehensive and fair assessment of the applicants' claims before producing a reasoned decision. When it considered the material aspects of the account upon which the first named applicant's well-founded fear of persecution was based the Tribunal found a level of inconsistency and lack of coherence which properly resulted in a finding of non-credibility. In terms of the standard of proof applied, the respondents submit that the Tribunal followed the appropriate test for future persecution as set out by Humphreys J. in *EL (Albania) v IPAT* [2019] IEHC 699. The respondents submit that the law on the benefit of the doubt is well established and has been set out clearly by Humphreys J. in *JUO v IPAT* [2018] IEHC 710, Keane J. in *NN v Minister for Justice and Equality* [2017] IEHC 99, O'Regan J in *ON v Refugee Appeals Tribunal* [2017] IEHC 1334, and Humphreys J. again in *M (Pakistan) v The International Protection Appeals Tribunal No. 2* [2019] IEHC 315. The respondents contend that the

Tribunal properly applied s. 28(7) to their consideration of whether the applicant was entitled to the benefit of the doubt and urge the court to follow Ferriter J. in *AH and ors v IPAT and Anor*.

Decision

17. Both parties accept that the decision of Ferriter J. in *AH and ors v IPAT and Anor* is on point in terms of the law but the applicants argue that it can be distinguished here on the facts.

18. Section 28(7) states:

> "Where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation where the international protection officer or, as the case may be, the Tribunal, is satisfied that—
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> (a) the applicant has made a genuine effort to substantiate his or her application,
> (b) all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given,
> (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case,
> (d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so, and
> (e) the general credibility of the applicant has been established".

19. Ferriter J. set out in his decision a thorough analysis of the principles in relation to the assessment of credibility (at para. 11 to 19) which I accept and endorse. In particular I highlight para. 17 where he summaries the correct approach:

> "In short, it is clear that before the benefit of the doubt can be given in relation to undocumented aspects of an applicant's claims, the applicant's general credibility must be established (see s.28 (7)(e)). Once the applicant's general credibility has been established, undocumented aspects of the applicant's case do not need to be confirmed i.e. can get the benefit of the doubt where, but only where, the four other factors in s. 28 (7)(a) to (d) are satisfied".

20. There is no reason to depart from the approach of Ferriter J. in this case and I reject the applicants' contention that the facts of their situation allow his decision to be distinguished. The Tribunal concluded that aspects of the applicants' claim remained in doubt. The first named applicant failed to discharge the burden of proof resting on her to establish credibility and the Tribunal was entitled to decline to apply the benefit of doubt to those facts that remained in doubt.

21. I therefore refuse the application.

Indicative view on costs

22. As the applicants have not succeeded in their application, my indicative view on costs is that costs should, in accordance with s.169 of the Legal Services Regulation Act, follow the cause and the respondents are entitled to their costs against the applicants.

23. I will list the matter for mention before me at 10 a.m. on 21 July to allow the parties to make such further submissions on costs as they wish to make and to hear whatever submissions the parties wish to make on the final orders to be made. I am not requiring written submissions but if the parties do wish to make them they should be lodged with the court at least 24 hours before the matter is back before me.